

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

NICOLAS CAROSIELLO,)	CASE NO. 4:20-CV-02272
)	
Petitioner,)	JUDGE BRIDGET MEEHAN BRENNAN
)	
v.)	
)	
WARDEN LaSHANN EPPINGER,)	<u>MEMORANDUM OPINION</u>
)	<u>AND ORDER</u>
Respondent.)	

Before the Court is the Report and Recommendation (“R&R”) of Magistrate Judge Amanda M. Knapp recommending that Nicolas Carosiello’s (“Petitioner”) petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 be denied. (Doc. No. 29.)

Once a magistrate judge issues a report and recommendation, the relevant statute provides:

Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.

28 U.S.C. § 636(b)(1)(C) (flush language). The failure to file written objections to a magistrate judge’s report and recommendation constitutes a waiver of a de novo determination by the district court of any issue addressed in the report and recommendation. *Thomas v. Arn*, 728 F.2d 813 (6th Cir. 1984), *aff’d* 474 U.S. 140 (1985); *see also United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).

Petitioner is not represented by counsel. The R&R was issued on December 27, 2023. (Doc. No. 29.) On January 24, 2024, Petitioner filed a motion for extension of time to file objections to the R&R. (Doc. No. 30.) In his motion for extension of time, Petitioner

acknowledged having a copy of the R&R but wanting additional time to research possible objections. (*See id.*)

On January 25, 2024, the Court granted Petitioner's motion, in part, and ordered that any objections be filed on or before February 12, 2024. (1/25/2024 non-document Order.)

Petitioner's motion and the state offender website both listed Petitioner's new facility as Belmont Correctional Institution. A copy of the January 25, 2024 Order was mailed to him at that Belmont Correctional Institution and his prior institution of incarceration. (1/25/2024 docket entries.)

The time for filing objections has passed. Taking into account the prison mailbox rule, a filing presented to prison officials on February 12, 2024, would have been delivered to this Court by the date of this Order, which is 21 days after the deadline for filing objections. *See Houston v. Lack*, 487 U.S. 266, 275-76, 108 S. Ct. 2379, 101 L. Ed. 2d 245 (1988) (establishing the prison mailbox rule); *Armour v. Gundy*, 107 F.3d 870 (Table), 1997 WL 91462, at *1 (6th Cir. 1997) (prison mailbox rule applies to objections to a magistrate judge's report and recommendation). No objections have been received by the Court. Petitioner has waived a de novo determination by this Court of the issues addressed in the R&R. *See Peoples v. Hoover*, 377 F. App'x 461, 463 (6th Cir. 2010) (recognizing that courts have enforced the rule requiring objection to a magistrate report regularly against pro se litigants).

The Court has reviewed the R&R, agrees with the recommendations stated therein, and hereby ADOPTS the R&R. For the reasons stated in the R&R, Grounds One and Two are DENIED and Grounds Three and Four are DISMISSED with prejudice due to procedural default. Notwithstanding the dismissal with prejudice of Grounds Three and Four, the Court further agrees with the R&R's alternative recommendation that the claims stated in Grounds

Three and Four are meritless and are hereby DENIED. Accordingly, the Court certifies that an appeal from this decision could not be taken in good faith, and there is no basis to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

IT IS SO ORDERED.

Date: March 5, 2024

A handwritten signature in black ink, appearing to read "Bridget M. Brennan", written over a horizontal line.

BRIDGET MEEHAN BRENNAN
UNITED STATES DISTRICT JUDGE